MasterType *and* Robert J. Hartmann. Case 20–CA–22808

July 15, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Exceptions filed to the judge's decision in this case[1] present the question of whether the Respondent withheld job opportunities and discharged Robert J. Hartmann because of his protected grievance activities, in violation of Section 8(a)(3) and (1) of the Act.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, MasterType, San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] On April 17, 1992, Administrative Law Judge Richard J. Boyce issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully reviewed the record and find no basis for reversing the findings.

Jonathan J. Seagle, Esq., for the General Counsel.
John Cantwell, Esq., of Walnut Creek, California, for the Respondent.
Robert J. Hartmann, of Concord, California, pro se.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge. I heard this matter in San Francisco, California, on February 10, 1992.

The complaint arose from a charge filed by Robert J. Hartmann, acting in his individual capacity.[1] It alleges that MasterType (Respondent) violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by denying employment opportunities to Hartmann between about February 23 and August 10, 1989, and by discharging him on or about August 10, 1989.

[1] The charge was filed on August 14, 1989. The complaint issued on April 29, 1991.

I. JURISDICTION/LABOR ORGANIZATION

Respondent, a California corporation, is engaged in the printing business in San Francisco. In 1988, it received goods and materials worth over $50,000 directly from suppliers outside California and/or from suppliers within the State who received them from out of State. I find that at relevant times Respondent was an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

The parties have stipulated and I find that Bay Area Typographical Union Local 21 (the Union) is a labor organization within Section 2(5) of the Act.

II. THE ALLEGED MISCONDUCT

A. *Evidence*

Hartmann has been a journeyman typesetter since 1966. He was employed by Respondent, on a substitute basis, from March 1987 until discharged on August 10, 1989. All of the typesetting he did for Respondent was on alpha-type equipment.[2] As a substitute, he worked when Respondent's workload so dictated and as a replacement for full-time employees (situation holders) on vacation or otherwise absent. He was first in ''priority ranking'' on the substitute board.

At relevant times, Respondent and the Union were party to a collective-bargaining agreement. Hartmann was among those covered by the agreement.

In January 1989, Hartmann told one of Respondent's two co-owners, Nino Kiraly, that he wanted to become a situation holder. Kiraly asked if he would be available day or night, since he had said in 1987 that he had to be home in the afternoon when his son, Robby, got home from school. Hartmann is a single parent and Robby is retarded. Hartmann replied that that was no longer an issue; that Robby had become ''pretty independent'' and could ''be by himself any time of day or night.''[3]

On February 3, Respondent hired one Elliot Bergson as a situation holder. Bergson had worked for Respondent previously, but had quit about a year before.[4]

On February 22, having just learned about Bergson's hire, Hartmann queried various coworkers whether the job given Bergson had been ''posted properly,'' gaining the impression that it had not. He protested to Kiraly that it was ''unfair,'' that Kiraly had ''promised [him] the full-time job, and that ''the union contract'' said he was ''entitled to that job.'' Kiraly responded, ''Well, you'll get full-time work anyway on the sub board, so don't worry about it.''

Hartmann spoke with the chapel chairperson, Yvonne Rose, about the situation later the same day, obtaining a grievance form. Still on February 22, Kiraly saw the form on Hartmann's desk. Kiraly said, according to Hartmann, ''If you fill that out, don't come in tomorrow.'' Kiraly disputed Hartmann's version, testifying that he simply asked, ''What seems to be the problem?''

[2] Hartmann described the alpha-type equipment as ''a computer with a video display terminal and a keyboard.''

[3] Kiraly testified that he could not recall Hartmann's saying that the ''problem'' of his availability ''had been solved.'' I credit Hartmann, who was the more convincing on the point.

[4] The legality of Respondent's installing Bergson rather than Hartmann as a situation holder is not in issue.

Hartmann did not grieve at that time. He explained, ''I figured Nino would keep his promise . . . that I would be a full-time employee as a substitute.''

In mid-March, Hartmann and the chapel chairperson, Rose, spoke with Kiraly and the other co-owner, Jiri Barta, about the Bergson matter. Hartmann complained that he was not getting ''enough hours,'' that the opening filled by Bergson ''was not properly posted,'' and that ''it was rightfully [his] job.'' Barta responded that were Hartmann to file a grievance, ''we'll have 'Goldfinger' all over us''; and that perhaps he ''should just fire both'' Hartmann and Bergson to eliminate the problem. ''Goldfinger'' was the Union's president, Morris Goldman.

Following the meeting just described, in an apparent effort to circumvent the problem, Respondent reclassified Bergson as a technician rather than an alpha-type operator.

Hartmann finally caused a grievance to be filed on May 23. Kiraly had said he would work ''three solid weeks at the end of May,'' he recalled, because three people would be on vacation; but Barta told him on May 22, after only 1 day, not to come in on May 23. Hartmann mentioned Kiraly's assurance, and Barta said, ''Don't come in, call.'' When Hartmann called on May 23, Barta said he was not needed. Hartmann thereupon asked Barta to summon the chairperson, Rose, to the phone, told her the completed form was in his desk, and asked her to file it.[5]

Hartmann had written on the grievance form:

> Feb. 6, 1989. A situation was filled without apprising the sub next on the board of an opportunity to claim. While calling in every day that month I was told there was not enough work. On Feb. 23 I finally got a day's work. I noticed the situation filled on the priority list. Bergson had been doing my work for 2-1/2 weeks. I immediately told Nino and the Chairperson. I was promised a full-time job as a sub by Nino. This has never materialized.

Hartmann has worked only three shifts—on May 26 and June 1 and 2—since the grievance was filed.[6] He also worked a few minutes on August 10, in apparent implementation of the grievance's settlement, before being discharged.[7]

Hartmann testified that he called Respondent ''every day'' after May 22 to ask if he was needed; and that either Kiraly or Barta generally replied, ''No, there's not enough work.''

On July 3, Hartmann and the Union's president, Goldman, met with Kiraly and Barta about the grievance. Although the evidence regarding this meeting is scant, Goldman apparently said Hartmann had ''a claim'' on the hours worked by another substitute, Marcia Beales, under the contract;[8] and Kiraly and Barta commented that Hartmann was ''a very bad proofreader.''[9]

In late July, Hartmann composed a 1-page document entitled ''A Brief History of Bob Hartmann at Mastertype,'' which he circulated among several coworkers. Its purpose, he testified, was to assist him and the coworkers should they have to testify concerning his grievance.

On August 2, Hartmann and union officials again met with Kiraly and Barta, ostensibly resolving the grievance. The resolution, in letter-form signed by Kiraly and Goldman, provided:

> The undersigned parties have resolved a grievance submitted by Robert Hartmann in the following manner:
>
> 1. The typesetter situation now being occupied by an employee with lower priority than Robert Hartmann has been found to have been improperly posted.
>
> 2. Said typesetter situation will be reposted for claim, effective August 7, 1989.
>
> 3. Priority claiming will take place by employees competent to perform the work.

On August 9, Hartmann reported for work uninvited. Goldman had advised him to ''go in and claim a situation'' if he saw someone ''working in [his] spot.'' ''There was a lot of work on the desk where the work is handed out,'' Hartmann testified, but both Kiraly and Barta told him: ''We don't need you. Leave immediately.'' To Hartmann's rejoinder that he saw ''a lot of work,'' they again directed him to ''leave immediately.'' He said, ''I'd like to wait for the chairperson to come''; and they came back: ''You're trespassing. Leave now.''

Hartmann did not leave just then, instead declaring that he was ''documenting everything that [was] said and done,'' and that he had contacted the Typographical Union, the Department of Fair Employment and Housing, and the National Labor Relations Board.'' Kiraly shot back, ''I don't have time to document everything.'' About then, Hartmann's ''brief history'' in hand, Barta asked, ''What's this 'brief history' document here?'' Hartmann said he would ''be happy to talk . . . about it'' if Barta wished or if he thought ''there's anything that's untrue.'' Barta rejoined: ''I don't have time. I don't want to talk to you about it.'' Both Kiraly and Barta seemed ''very angry,'' according to Hartmann.

Hartmann reported again the next day, August 10, pursuant to an understanding between Respondent and the Union. He told Barta, first thing, that he was ''filing a grievance to claim [Beales'] day's pay yesterday.''[10] Barta said angrily, ''Do what you want.'' That over, Hartmann testified he ''noticed a pile of jobs on the old alpha-type printout'' and ''offered to expedite'' them. Hartmann to the contrary, Barta tes-

[5] The form is dated May 22. Timecards in evidence reveal that Hartmann worked on May 22, but not for a number of days before or after. I deduce, therefore, that he filled out and dated the form while at work on May 22, and that he directed Rose to file it following Barta's unsatisfactory response on May 23.

[6] Hartmann testified that he thereafter worked only on June 1 and 2. The timecards disclose, however, that he also worked on May 26.

[7] Of which more later.

[8] Beales, hired in August 1988, ranked below Hartmann on the substitute board.

[9] Respondent had a regular proofreader, Alex Binder. Kiraly testified that Hartmann nevertheless was called on to proofread ''for a short while'' in 1988, but that it did not work out. Asked if the quality of Hartmann's proofreading was worse than that of others, Kiraly testified: ''Yes. It could be. More or less. Some are worse mistakes than others. But it depended on, on the, on the day.'' He also testified, in this context, that ''everybody makes mistakes,'' and that he and Barta ''are always on the premises to make sure that the quality remains in our product.''

[10] The timecards show that Beales had worked on August 9.

tified that ''it was an extremely slow day,'' with only ''two or three jobs'' to do.

Regardless, Barta ''split'' a job being done by Beales ''into two sections,'' giving half to Hartmann. The job entailed typesetting the ''conventional way,'' according to Barta, but was to be printed on newly installed linotronic equipment. Beales, who had learned to operate that equipment while employed elsewhere, was one of perhaps two employees then familiar with it. Barta testified that ''that's why'' she had been assigned the job. Hartmann, in common with most if not all the other employees, had neither training nor experience on this equipment.

Hartmann recounted that he put the disc in the Macintosh, with which he was familiar, ''called it up on the screen,'' and ''pulled it down on the pull-down menu, where it said print.'' Barta and Kiraly were looking over his shoulders, he testified; and, conceding that he did not know ''how to run this thing,'' he asked if he was ''doing it right.'' ''They did not seem to answer,'' he testified, but ''just looked at'' him. Hartmann suggested that he ''go get [Beales] and she can show me this in 30 seconds and we'll get this job out''; and they said, ''She can't help you.''[11]

Hartmann's account went on that Kiraly or Barta asked, ''What about all these documents that you've given us that say you know how to run the linotronic?'' and that he replied: ''I never told you I knew how to run the linotronic. All the documents that I have given you were for Macintosh and laser printers.''[12] Hartmann further told them, as he recalled:

> I could not possibly know how to run this machine. . . . [T]he last day I worked here, which was June 2nd, this machine was not even out of the box. . . . How can you expect me to know how to run this machine if the last day I was here it wasn't even running?

With that, Hartmann testified, Barta said, ''Take your things and leave.'' Hartmann added that he offered to take the program home ''and learn it on [his] Macintosh,'' but ''they did not seem to be the slightest bit interested.'' Barta presently asked him to sign a document stating: ''I, Bob Hartmann, was unable to perform the tasks and jobs that I was given August 10, 1989, at Mastertype.'' Hartmann refused to sign, remarking, ''Do you think I'm that stupid?''

Hartmann's recital proceeded that he then said, ''I want to wait for the chairperson, and I want to have some representation here.'' Kiraly and/or Barta said in turn, ''Leave, you're trespassing again''; and Hartmann responded, ''I'm thirsty, can I go into the lunchroom and wait for her?'' They persisted: ''No, you're trespassing. Leave now.'' Hartmann refused to punch out without seeing Rose. Barta punched out for him, and he left, assuming without being expressly told that he had been discharged.

Barta recalled the events of August 10 somewhat differently. He testified that after assigning Hartmann a portion of Beales' job he left to make some calls; that, when he returned, Hartmann said he could not ''perform the job''; and that he consequently ''gave it back to Marcia to complete it.'' Barta recounted that he left again to answer some calls; that he asked Hartmann, upon returning, what he was doing; and that Hartmann told him, ''very sarcastically,'' that he was ''practicing'' because he ''forgot how to type.''

Barta continued:

> I told him that, since I don't have anything conventional, in conventional typesetting, and I knew that he went through all this training on Macintosh, and I had two, one or two jobs to be performed on Macintosh, I took him to [a] different department, and I told him to run it on, through the printer, because [the] person who was in charge in the department had lunch at that time.

Barta testified that he left yet again to answer some calls; that, when he came back, Hartmann said once more that he ''couldn't do it''; and that he responded, ''Well, sorry, Robert, I don't have . . . anything else for you to do.''

Barta proceeded:

> Under union rules . . . once he's punched in I have to pay him seven hours. And being an extremely small company compared to my competition, I just cannot afford that. So I told him to punch out and, you know, some other day when, when we would be busy, we could again do something. However, he didn't want to punch out, and so I told him that, because I have nothing for him to do and he cannot perform it, that he's fired as of that moment.

Kiraly did not address the events of August 10 in his testimony, and Barta did not expressly implicate Kiraly in those events.

After Hartmann's departure on August 10, Kiraly, Barta, and Rose signed this letter, which Respondent then sent to the Union:

> To whom it may concern:
>
> Bob Hartman [sic] stated that he was capable/qualified to do Desktop Publishing/Macintosh . . . and do any other typography jobs assigned to him. Therefore, he was hired on August 10, 1989 for the 12 o'clock shift.
>
> 1. 12:02—Robert was given part of Mastertype's job #30093. Second part was given to Marcia Beales. Robert stated that he was not able to do the job.
>
> 2. 12:06—Robert started to set on Mastertype's terminal #4 ''quick brown fox jumps over the lazy dog.'' He told us that he wanted to make sure he could still type. . . .
>
> 3. 12:08—Robert was given a Macintosh disc to print out job for desktop publishing. After telling us that he is unable to do this job he said he needs help and training before he could do any of the jobs that were given him. At that time he was discharged for incompetency. He was asked to sign a note stating that

[11] Over time, Beales helped various of Respondent's employees with the linotronic.

[12] In June 1989, Hartmann received a ''certificate of achievement'' issued by the Contra Costa County Regional Occupational Program which attested to his ''proven proficiency'' regarding ''Desktop Publishing—Macintosh''; and, by letter dated July 26, 1989, his instructor in that program verified that he was enrolled in the program, ''with a concentration in the area of Desktop Publishing (Macintosh) & Typesetting'' from January to June 1989. Hartmann had shown these documents to Kiraly and Barta.

> he was unable to set the jobs given to him. At that time he said: ''Do you really think I'm that stupid?'' Then he got his things and left after only 15 minutes into his shift.

Hartmann testified that Kiraly often had praised his work, and that Respondent had never warned, reprimanded, or suspended him before August 10.

Asked why Respondent did not use Hartmann after June 2, Kiraly testified:

> Because . . . we didn't have any conventional typesetting to be produced . . . that we couldn't produce with our regular situation holders.

Seemingly speaking to the same question, Barta testified that summer is Respondent's slow season; that Hartmann ''didn't work one single shift all summer'' in 1988, either;[13] and that Respondent could not afford to have him ''work for, let's say, three hours and pay him for seven hours,'' particularly since it had ''committed'' itself to purchase the linotronic equipment.[14]

Kiraly added that ''the trend'' at the time was ''to go more and more desktop and less and less conventional hardcopy keyboarding, with somebody sitting at a keyboard''; and that Respondent since has reduced its number of alpha-type operators by ''more than half.'' He then clarified: ''They have not necessarily been let go. . . . We retrained a number of them over the years.'' As a result, he continued, 9 of Respondent's 11 situation holders now are ''fully competent to use the linotronic equipment,'' with the remaining two ''in the process of starting their training.''

While Respondent may print mainly on the linotronic equipment at present, this was not so in August 1989. Beales, on whom Respondent then relied most heavily to operate it, testified that she spent ''maybe'' 20 percent of her time on it in August 1989. Rita Coy testified that she operated ''the alpha-type system'' exclusively in August; and that, since learning how to operate the linotronic equipment ''way, way after'' it was installed, she spends ''far less than ten percent'' of her time on it. Coy added that, except for Beales, nobody used the new equipment much in its early days. Coy elaborated:

> Marcia [Beales] was the only one that knew how. So, . . . nobody was using it. . . . So, if we got something in, it was given to her. Because she knew how to run it. So, we basically didn't learn it.

Kiraly denied that Hartmann's grieving and complaining annoyed him. He conceded, however, that he ''may have'' called Hartmann ''an asshole'' because of it.

As against Hartmann's 2 days in June, Beales worked 8 despite her lesser rank on the substitute board. Beales worked 5 days in July, as well, and 8 in August—including the day before and the day of Hartmann's discharge. In January 1989, according to the timecards, Hartmann worked 13 days to Beales' 10; in February, 8 to her 0; in March, 9 to her 12; in April, 11 to her 7; in May, 5 to her 11.

Respondent hired two people in early June, Laura Brown and Linda Kattwinkel. Kiraly testified that Brown had ''four years' experience . . . with the linotronic and the Macintoshes,'' and that Kattwinkel ''was not a keyboard operator'' and worked ''in a whole different department.'' As earlier summarized, the record indicates rather conclusively that Respondent relied principally on Beales, not Brown, to do its linotronic work in the early months after installation of that equipment.[15]

B. *Conclusion*

Applying the analytical approach prescribed in *Wright Line*,[16] I conclude that the General Counsel has made the requisite prima facie showing that Respondent withheld employment opportunities from and discharged Hartmann because of his inarguably protected grievance activities. I base this conclusion on these considerations:

(a) Respondent mightily resented Hartmann's grievance activities. Thus, crediting Hartmann, Kiraly stated in February upon seeing a grievance form on his desk, ''If you fill that out, don't come in tomorrow.''[17] Further, Kiraly admittedly ''may have'' called Hartmann ''an asshole'' in the context of his grievance activities; and Barta voiced alarm in March that ''we'll have 'Goldfinger' all over us'' should Hartmann file a grievance.

(b) Hartmann suffered an almost immediate and drastic reduction in work opportunities after the May 23 filing of his grievance. Whereas he worked an average of about 10 days per month from January through April and worked 4 days in May before May 23, Respondent used him only 3 times—on May 26 and June 1 and 2—in the ensuing 2-plus months.

(c) Beales, who was below Hartmann on the substitute board and averaged fewer days than he from January through April, worked 8 days in June and 5 in July.

(d) Hartmann's discharge occurred within a few minutes on his first day at work following ostensible settlement of his

[13] Respondent placed in evidence a graph showing that sales slumped in June and July and again in September and October 1989.

[14] Kiraly testified that the linotronic cost $120,000.

[15] Hartmann grieved his discharge. A tentative settlement—ultimately rejected by him—was reached on August 22, 1989. Among its provisions were that Respondent would ''make his equipment available for Hartmann to receive training,'' and that Hartmann bore the responsibility ''to provide an instructor for such training.'' Hartmann testified that, with this in mind, he asked Brown to teach him to operate the linotronic, ''and she was all agreeable.'' Hartmann continued: ''And then I called her two days later to set up a time, and all of a sudden she didn't want to do it. . . . I don't know why.''

[16] In *Wright Line*, 251 NLRB 1083 (1980), the Board stated at 1089:

> [W]e shall henceforth employ the following causation test in all cases alleging violation of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

This formulation received Supreme Court approval in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

[17] Hartmann impressed me in this instance and generally, by both demeanor and the content of his testimony, as a sincere and capable witness. Kiraly's alternative version of this incident was hollow by comparison.

grievance on August 2, which suggests a link between the two.

(e) On August 10, before the discharge and with transparent malice, Respondent needlessly subjected Hartmann to a situation in which he—and most of the employees—could not possibly succeed.[18] Barta's subsequent effort to have Hartmann acknowledge in writing that he ''was unable to perform the tasks and jobs'' given him, and the follow-up letter to the Union, meticulously detailing Hartmann's assorted failures that day, underscored Respondent's vindictive predisposition toward him.

(f) Amalgamating Hartmann's and Barta's accounts, Barta held out the prospect on August 10 of calling Hartmann ''some other day,'' but then discharged him when he insisted upon seeing the chairperson before punching out. This indicates that the latter—a protected grievance-related activity—and not Hartmann's job performance that day, was the immediate trigger.

I further conclude that Respondent has not overcome the General Counsel's prima facie showing with respect to either the withholding of opportunities from Hartmann or the discharge.

With regard to the withholding of opportunities, the evidence is uncontroverted that Respondent suffered a seasonal dip in the summer of 1989. That did not prevent its considerable June and July use of Beales to the exclusion of Hartmann, however, or its hire of Laura Brown in early June. The continued use of Beales and the hire of Brown, in combination with the obviously limited use of the linotronic equipment until much later, also belie Kiraly's assertion that Respondent had no ''conventional typesetting . . . that [it] couldn't produce with [its] regular situation holders'' in June and July.

As for the discharge, Hartmann's supposed incompetence was narrowly based and shared by most of the employees at the time. While increased reliance by Respondent on the linotronic equipment perhaps would have occasioned less call for him pending the enhancement of his skills, it would not have warranted his discharge. The weight of evidence establishes, in any event, that the new equipment was receiving only limited use as of August 10.

I conclude, in short, that Respondent has not overcome the General Counsel's prima facie showing in either regard, and that Respondent therefore violated Section 8(a)(3) and (1) by withholding employment from Hartmann in June, July, and early August 1989, and by discharging him on August 10.[19]

CONCLUSION OF LAW

Respondent violated Section 8(a)(3) and (1) of the Act by withholding employment opportunities from Hartmann in June, July, and early August 1989, and by discharging him on August 10, 1989.

REMEDY

I will include in my recommended Order provisions that Respondent cease and desist from the unfair labor practices herein, and that it take certain affirmative action to effectuate the policies of the Act.

With regard to the latter, I will specify that Respondent immediately reinstate Hartmann to his former place atop the substitute board, without prejudice to his seniority or any other rights or privileges, and that it notify him in writing that this has been done; that it henceforth afford him employment opportunities in keeping with his qualifications and his place on the substitute board; that it make him whole, with interest, for earnings and benefits lost because of its unlawful discrimination against him;[20] and that it remove from its files and destroy any and all writings documenting or referring to the conduct comprising that unlawful discrimination, and notify Hartmann in writing that this has been done and that those unlawful actions will in no way serve as a ground for future personnel or disciplinary action against him.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

The Respondent, MasterType, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withholding employment opportunities from, discharging, or otherwise discriminating against Robert J. Hartmann or any other employee because of their protected grievance activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights protected by the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately reinstate Hartmann to his former place atop the substitute board, without prejudice to his seniority or any other rights or privileges, and notify him in writing that this has been done.

(b) Henceforth afford Hartmann employment opportunities in keeping with his qualifications and his place on the substitute board.

(c) Make Hartmann whole as prescribed above in the remedy section for earnings and benefits lost because of its unlawful discrimination against him.

(d) Remove from its files and destroy any and all writings documenting or referring to the conduct comprising the unlawful discrimination against Hartmann, and notify him in writing that this has been done and that those unlawful actions will in no way serve as a ground for future personnel or disciplinary action against him.

(e) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or help-

[18] I credit Hartmann that ''a pile of jobs on the old alpha-type printout'' were awaiting execution.

[19] The weight of evidence does not support the conclusion urged by the complaint that Respondent unlawfully withheld employment from Hartmann starting on about February 23, 1989.

[20] Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950). Interest shall be calculated as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[21] I deny any outstanding motions inconsistent with this Order. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ful to determine the backpay owing under the terms of this Order.

(f) Post copies of the attached notice marked ''Appendix.''[22] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted by it immediately upon receipt, and maintained for 60 consecutive days, in conspicuous places, including all places where notices to employees customarily are posted. Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[22] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withhold employment opportunities from, discharge, or otherwise discriminate against Robert J. Hartmann or any other employee because of their protected grievance activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights protected by the Act.

WE WILL immediately reinstate Hartmann to his former place atop the substitute board, without prejudice to his seniority or any other rights or privileges, and WE WILL notify him in writing that this has been done.

WE WILL henceforth afford Hartmann employment opportunities in keeping with his qualifications and his place on the substitute board.

WE WILL make Hartmann whole for earnings and benefits lost because of our unlawful discrimination against him.

WE WILL remove from our files and destroy any and all writings documenting or referring to the conduct comprising our unlawful discrimination against Hartman, and WE WILL notify him in writing that this has been done and that those unlawful actions will in no way serve as a ground for future personnel or disciplinary action against him.

MASTERTYPE